Filed 3/29/19 Marriage of Spinola CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of WILLIAM SPINOLA and BRENDA SPINOLA.	
WILLIAM SPINOLA, Appellant, v. BRENDA SPINOLA, Respondent.	A148825 (Alameda County Super. Ct. No. HF14709849)

This is an appeal from a judgment of dissolution of marriage concerning the disposition of a $152,847 loan appellant William Spinola provided respondent Brenda Spinola for a manufactured home before they married.[1] The trial court found Brenda was obligated to repay William pursuant to a loan agreement the couple had executed, but the court restricted William's ability, as lienholder, to evict Brenda from the property for nonpayment. Since William has not persuaded us the court erred in making the ruling, we affirm the judgment.

BACKGROUND

In 2007, a few years into their dating relationship, William loaned Brenda $152,847 to purchase a manufactured home to be placed in the Pueblo Springs Mobile

[1] For clarity, we will refer to the parties by their first names. We intend no disrespect.

Home Park in Hayward, California. They each executed a "Loan Agreement/Secured Note Document" (Loan Agreement) which stated: "THIS LOAN IS BEING MADE IN ITS ENTIRETY FOR THE PRINCIPAL AMOUNT ONLY WITH NO INTEREST ADDED FOR THE LIFE OF THE LOAN. THE LIFE OF THE LOAN BEING 60 MONTHS FROM CLOSE OF ESCROW." They agreed that the Loan Agreement "will NOT SURVIVE THE LENDER, and WILL ONLY remain in full force and effect until such time as the principal amount of indebtedness owing by the Borrower [Brenda] to the Lender [William] shall have been repaid in full and/OR no additional extensions or advances have been requested, OR THE LENDER HAS BECOME DECEASED." Disbursement of the loan was conditioned on William being "NAMED AS SECONDARY BUYER OF THE MANUFACTURED HOME, INSURING THAT THE LENDER WILL HAVE AN INTEREST IN THE HOME UNTIL SUCH TIME AS THE PRINCIPAL AMOUNT IS PAID IN FULL BY BORROWER."

Later that month, escrow closed and Brenda purchased the manufactured home.

Sometime in 2008, Brenda signed William's name on a Department of Housing and Community Development form which removed William as the legal owner of record of the manufactured home and established Brenda as its sole legal owner. Brenda submitted the form to the state for processing.

William and Brenda married on October 10, 2009. They separated on October 5, 2012.

William petitioned for dissolution of marriage in January 2014 and requested the court determine, among other issues, the property rights disputed between the parties. One dispute was whether Brenda was obligated to repay William for the $152,847 manufactured home loan. That issue was the focus of substantial testimony during the two-day trial that took place in December 2015.

William testified that he wanted the loan to be paid back. He acknowledged that as long as he and Brenda were married, he was not going to seek repayment from her but rejected the notion that he would forgive the debt. Once they separated, he assumed he would be repaid. He never indicated to Brenda or her family she was not obligated to

repay the loan. He said he agreed "that [he] wouldn't kick her out of the house, foreclose the note, but [he] did not agree to [her] not repay[ing] the debt." He repeated, "My statement was . . . I wouldn't kick her out of the house, but I expected to get paid the loan amount."

Brenda testified that William was originally planning to give her the money for the manufactured home but she suggested it be a loan. According to Brenda, William repeatedly told her she no longer owed him the money, the loan was forgiven, and the house was a gift. Based on this understanding, Brenda registered herself as the legal owner of the home with the Department of Housing and Community Development. She regretted signing William's name on the title form but did so "in expediency" after she asked him about it and he agreed to sign it.

In its tentative decision, the trial court found Brenda was still required to repay William pursuant to the terms of the loan but William, who had to be restored to the title, could not eject her from the house if she did not pay. The court invited the parties to file responses to the tentative decision.

In his response, William noted he "[did] not disagree with the order directing repayment of the loan or the order directing that he be replaced on the certificate of title" but "object[ed] to any restrictions on enforcement of the debt." He asserted his "statement not to remove [Brenda] from her home was a promise, which at the time made, was made without consideration. Such a promise is an unenforceable promise." He further added that Brenda's material alteration of their contract, presumably by removing him from the title certificate, disqualified her from receiving any benefits under their agreement and that he was "authorized to pursue any legal remedy he may have under the terms of the underlying loan/contract."

In its Statement of Decision, the court overruled William's objections to any restrictions placed on his ability to execute on the manufactured home to satisfy the debt. The court found William did not forgive the loan but promised Brenda that "whatever happened between the parties, he would never evict her from her home." The court also found that Brenda "removed [William's] name from the lien by signing his name to

papers that he never authorized her to sign." The court explained it "does equity by . . . requiring [Brenda] to repay [William] the borrowed funds according to the terms of the original loan agreement, except that the Court also holds [William] to his promise made during the marriage. Although reinstated as lien-holder, [William] may never evict [Brenda] from the property for non-payment on the loan." The court made no findings or orders specifying when Brenda had to repay the loan.

On April 28, 2016, the Statement of Decision became final and judgment of dissolution was entered terminating the Spinolas' marriage. The judgment stated: "The Court finds that [Brenda] executed a Promissory Note in favor of [William] in the amount of $152,847.00. Further, the Court finds that the original terms of the Loan Agreement shall be honored in that the [parties] have a written agreement 'for an interest free Loan to remain in effect until repaid in full and/or no additional extensions or advances of time have been requested, or the Lender has become deceased. [¶] . . . [Brenda] shall do whatever act is necessary to restore [William] to the Title of the Mobile Home . . . as Lien Holder in the amount of $152,847.00, provided that the Lien also states the following, 'Petitioner (William M[.] Spinola) may never evict Respondent (Brenda Spinola-Bennett) from the property for non payment on the loan.' [Brenda] shall cooperate in reinstating [William's] name as Lien Holder with the above proviso stating that Petitioner may not evict [Brenda] from the property to execute on the Lien. Further, the Court finds that [William] did not 'persuade the Court that equity demands more for Petitioner than this relief.' "

William now appeals from the judgment, "specifically those portions of the Judgment limiting or restricting [his] right to evict and/or foreclose on his security for nonpayment of the monies found due [to him] from [Brenda]."

DISCUSSION

A judgment of a trial court "is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) "The burden of demonstrating

error rests on the appellant. [Citation.]" (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632 (*Winograd*).)

"When the trial court has resolved a disputed factual issue, the appellate courts review the ruling according to the substantial evidence rule. If the trial court's resolution of the factual issue is supported by substantial evidence, it must be affirmed." (*Winograd, supra,* 68 Cal.App.4th at p. 632.) In applying the substantial evidence standard of review, " 'the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.) "The substantial evidence standard applies to both express and implied findings of fact made by the superior court in its statement of decision rendered after a nonjury trial. [Citation.]" (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

William makes general claims in his briefing that the trial court could not limit his remedies as a creditor. None of the authorities he relies upon are persuasive because none of them address a debtor and creditor relationship between a wife and husband in a dissolution action.

William also claims the trial court committed error under contract law. He says the court's restriction on his ability to evict Brenda erroneously modified the contract. He relies upon Civil Code section 1698 subdivisions (a) through (d)[2], which govern

[2] These provisions state: "(a) A contract in writing may be modified by a contract in writing. [¶] (b) A contract in writing may be modified by an oral agreement to the extent that the oral agreement is executed by the parties. [¶] (c) Unless the contract otherwise expressly provides, a contract in writing may be modified by an oral agreement supported by new consideration. The statute of frauds (Section 1624) is required to be satisfied if the contract as modified is within its provisions. [¶] (d) Nothing in this section precludes in an appropriate case the application of rules of law concerning

contract modifications, but he fails to explain how any of these provisions would nullify any modification effectuated by the trial court's decision. William has thus forfeited this claim of error. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["Issues do not have a life of their own: if they are not raised or supported by argument . . . , we consider the issues waived."]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court "will not develop the appellants' arguments for them"].)

William argues the court's restriction on eviction was error because he did not waive his enforcement rights under the loan agreement. He states, "No evidence was presented that [William] knowingly and intentionally relinquished the rights he had to secure repayment of the monies he loaned [Brenda]. It is inconsistent that [he] never forgave the debt but relinquished certain rights to collect the debt." The trial court never found a waiver. Rather, the court affirmed the validity of the loan balance and Brenda's obligation to repay William under the terms of the agreement. Its decision only limited Brenda's possible eviction if the loan or William's lien is enforced. Even if this restriction could be construed to result from a waiver, William's contention that it was unsupported is contrary to the record. At trial, William testified repeatedly that he agreed he "wouldn't kick her out of the house." The trial court's restriction reflected his promise.

For his third contract-based argument, William relies on Evidence Code section 622,[3] for the principle of "estoppel by contract" under which he says parties are bound by the contents of instruments they have executed and are precluded from later claiming an executed agreement does not express their intent or understanding. This argument is forfeited because it was not raised in the trial court. (See *Kern County Dept. of Child*

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estoppel, oral novation and substitution of a new agreement, rescission of a written contract by an oral agreement, waiver of a provision of a written contract, or oral independent collateral contracts." (Civ. Code, § 1698, subds. (a)-(d).)

[3] Evidence Code section 622 states: "The facts recited in a written instrument are conclusively presumed to be true as between the parties thereto, or their successors in interest; but this rule does not apply to the recital of consideration."

Support Services v. Camacho (2012) 209 Cal.App.4th 1028, 1038 ["It is axiomatic that arguments not raised in the trial court are forfeited on appeal."].) Nor was it raised in William's opening brief on appeal, and William has not shown good reason for its omission. (See *Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8 [" '[P]oints raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.' "].)

Even if we were to consider William's estoppel-by-contract argument, it would not be persuasive. The Loan Agreement between William and Brenda contained no integration clause declaring the contract to be the complete and final agreement between the parties. Its provision extending the loan's duration until it has "been repaid in full and/OR *no additional extensions or advances have been requested*" suggests the prospect of future changes to the payment obligation. (Italics added.) Since there was nothing in the agreement that would foreclose oral supplemental terms and substantial evidence supported the restriction imposed by the court, the estoppel-by-contract argument has no weight.

Finally, William argues California Uniform Commercial Code section 9601, subdivision (a)(1) authorizes him to reduce his claim to a judgment and foreclose on the collateral manufactured home. That provision states: "(a) After default, a secured party has the rights provided in this chapter and, except as otherwise provided in Section 9602, those rights provided by agreement of the parties. A secured party may . . . (1) Reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure." (Cal. U. Com. Code, § 9601, subd. (a)(1).) However, by its terms, section 9601 also subjects a creditor's rights to "*those rights provided by agreement of the parties.*" (*Ibid.*, italics added.)

The judgment provides that William "may never evict Respondent (Brenda Spinola-Bennett) from the property for non-payment of the loan." It does not expressly restrict William's remedies to enforce his rights as a creditor and Brenda's obligation to repay the loan in any manner allowed by law except for her eviction. Whatever other

rights William retains, he has not convinced us that he maintains among these rights the right to evict Brenda from the house for nonpayment of the loan.

We need not address William's concluding arguments against estoppel. Such arguments were not raised by Brenda in her respondent's brief, nor is estoppel the basis for our decision.

DISPOSITION

The judgment is affirmed.

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Siggins. P.J.

WE CONCUR:

_____
Fujisaki, J.

_____
Wiseman, J.[*]

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[*] Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.